

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 18, 2006

STEVEN HUGHES v. NECX DISCIPLINARY BOARD MEMBERS, ET AL.

**Appeal from the Chancery Court for Johnson County
No. 5657 G. Richard Johnson, Chancellor**

No. E2005-01972-COA-R3-CV - FILED MARCH 16, 2006

Steven Hughes, a prisoner in state custody, filed a petition for writ of certiorari in the trial court, alleging that the prison disciplinary board (“the board”) abused and exceeded its authority when it found him guilty of intent to have drugs sent into the prison. The defendants filed a motion to dismiss, asserting that the plaintiff’s petition failed to meet certain specific constitutional and statutory requirements. The trial court granted the defendants’ motion. The plaintiff appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Steven Hughes, Mountain City, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter, and Jennifer L. Brenner, Assistant Attorney General, for the appellees, Tennessee Department of Correction, and NECX Disciplinary Board Members, Steve Payne, Jodie Necessary, and Tequila Osborne.

OPINION

I.

The plaintiff is incarcerated at the Northeast Correctional Complex in Johnson County. In September, 2004, he appeared before the board, comprised of Sgt. Steve Payne, Jodie Necessary, and Tequila Osborne, to address a charge that he had “attempt[ed] to communicate with a freeworld person in an attempt to have drugs brought in to [sic] [the prison]” in violation of state law. Following a hearing, the board found the plaintiff guilty of the charge.

On November 29, 2004, the plaintiff filed a petition for writ of certiorari in the trial court. In his petition, the plaintiff alleged that the board exceeded its authority and had acted arbitrarily and capriciously. He sought, in his words, “an accordant review of this final decision by [the board].” In response to the petition, the defendants filed a motion to dismiss, claiming that the plaintiff failed to comply with the constitutional and statutory provisions requiring a petition for a common law writ of certiorari to be verified and to state that it was the first application for the writ. In addition, the defendants asserted that the plaintiff had failed to file a pauper’s oath.

The trial court entered an order on March 4, 2005, finding that the plaintiff’s petition was not verified and that it failed to state that it was the plaintiff’s first application for the relief sought. On the basis of these two grounds, the trial court dismissed the petition. With respect to the defendants’ alternative basis for dismissal – that the plaintiff failed to submit a proper bond for costs or file a pauper’s oath – the court found that the plaintiff had submitted a pauper’s oath, which the court had approved.

On March 16, 2005, the plaintiff filed a motion to alter or amend, in which the plaintiff alleged that his petition had been miscategorized by the court as a petition for *common law* writ of certiorari, when, in fact, it was a request for a *statutory* writ of certiorari. He relied upon the provisions of Tenn. Code Ann. §§ 27-9-102, 27-9-104 and 27-9-105 (2000).¹ He contended that a petition for a statutory writ of certiorari does not require an oath or the statement that the petition was the plaintiff’s initial attempt to obtain the writ. Thus, the plaintiff argued that his petition was not subject to dismissal based upon these perceived deficiencies. On August 11, 2005, the trial court entered its final order, denying the plaintiff’s motion. From this order, the plaintiff appeals.

¹Tenn. Code Ann. §§ 27-9-102, 27-9-104, and 27-9-105 provide, in the order stated, as follows:

Such party shall, within sixty (60) days from the entry of the order or judgment, file a petition of certiorari in the chancery court of any county in which any one (1) or more of the petitioners, or any one (1) or more of the material defendants reside, or have their principal office, stating briefly the issues involved in the cause, the substance of the order or judgment complained of, the respects in which the petitioner claims the order or judgment is erroneous, and praying for an accordant review.

* * *

The petition shall be addressed to the presiding chancellor and shall name as defendants the particular board or commission and such other parties of record, if such, as were involved in the hearing before the board or commission, and who do not join as petitioners.

* * *

The petitioner shall give bond for costs as in other chancery suits, or oath of paupers in lieu.

II.

The trial court's grant of a motion to dismiss for failure to state a claim upon which relief can be granted presents a pure question of law, which we review *de novo* with no presumption of correctness as to the trial court's judgment. *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997). We must examine the complaint alone, "construe the complaint liberally in favor of the plaintiff, taking all allegations of fact therein as true." *Cook v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994).

III.

We construe the plaintiff's brief as raising two issues on appeal: (1) whether the trial court erred in dismissing his petition for writ of certiorari and his subsequent motion to alter or amend; and (2) whether the trial court erred in denying the plaintiff's motion for an order requiring that he be transported to the courthouse for a hearing, presumably a hearing on the motion to dismiss.

With respect to the first issue, the plaintiff claims that his petition is one for a statutory writ of certiorari, rather than the common law writ of certiorari, and that a petition for the statutory writ does not require verification or the statement that the petition is the first application for the requested writ.

The common law writ of certiorari is "the proper procedural vehicle through which prisoners may seek review of decisions by prison disciplinary boards, parole eligibility review boards, and other similar administrative tribunals." *Willis v. Tenn. Dep't of Corr.*, 113 S.W.3d 706, 712 (Tenn. 2003); see *Rhoden v. State Dep't of Corr.*, 984 S.W.2d 955, 956 (Tenn. Ct. App. 1998). The statutory writ of certiorari "is not available for review of proceedings taken by a prison disciplinary board." *Buford v. Tenn. Dep't of Corr.*, No. M1998-00157-COA-R3-CV, 1999 WL 1015672, at *4 (Tenn. Ct. App. W.S., filed November 10, 1999).

There are both constitutional and statutory provisions pertaining to the requirements that must be met when filing a petition for a common law writ of certiorari. The Tennessee Constitution provides that

[t]he Judges or Justices of the Inferior Courts of Law and Equity, shall have power in all civil cases, to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, *supported by oath or affirmation.*

Tenn. Const. art. VI, § 10 (emphasis added). Similarly, Tenn. Code Ann. § 27-8-104(a) (2000) provides as follows:

The judges of the inferior courts of law have the power, in all civil cases, to issue writs of certiorari to remove any cause or transcript

thereof from any inferior jurisdiction, on sufficient cause, *supported by oath or affirmation*.

Id. (emphasis added). In addition, Tenn. Code Ann. § 27-8-106 (2000) provides that

[t]he petition for certiorari may be *sworn to before the clerk of the circuit court, the judge, any judge of the court of general sessions, or a notary public, and shall state that it is the first application for the writ*.

Id. (emphasis added).

The petition filed by the plaintiff is not verified and it fails to state that it is the first application, as required by the above-quoted constitutional and statutory provisions. Failure to comply with these two requirements has been held to be a proper basis for dismissal. *See Bowling v. Tenn. Bd. of Paroles*, No. M2001-00138-COA-R3-CV, 2002 WL 772695, at *3 (Tenn. Ct. App. M.S., filed April 30, 2002). The fact that the plaintiff is representing himself in this case does not excuse him “from complying with the same applicable substantive and procedural law that represented parties must comply with.” *Id.*, at *3 n.6 (citing *Hodges v. Tenn. Att’y Gen.*, 43 S.W.3d 918, 920 (Tenn. Ct. App. 2000); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995)).

The plaintiff contends that the trial court erred in denominating his petition as one seeking a common law writ of certiorari. He claims that it is not; rather, he argues, it is a petition for a statutory writ of certiorari filed pursuant to the code sections quoted in footnote 1 to this opinion. He says that such a petition is not required to be verified or contain the “first application” statement. This contention, as the saying goes, proves too much. If the plaintiff’s petition is one for a *statutory* writ of certiorari, it is subject to dismissal as being the wrong vehicle to “challeng[e] a disciplinary action.” *Rhoden*, 984 S.W.2d at 956. On the other hand, if the plaintiff’s petition seeks the *common law* writ of certiorari, it is defective for the reasons stated by the trial court.²

Because the plaintiff’s petition for writ of certiorari does not satisfy the constitutional and statutory requirements, we find no error in the trial court’s judgment dismissing the plaintiff’s petition and in denying his motion to alter or amend. The latter motion does not allege a legal or factual basis for a holding that the trial court erred in its original judgment granting the defendants’ motion to dismiss. *See Vaccarella v. Vaccarella*, 49 S.W.3d 307, 312 (Tenn. Ct. App. 2001).

With respect to the second issue, the plaintiff contends that the trial court erred in denying his motion for transportation for a hearing on the defendants’ motion. We disagree.

²On July 5, 2005 – some four months after the entry of the trial court’s order dismissing the plaintiff’s petition – he filed a motion to amend “to correct[] defects in his original complaint.” The plaintiff’s issues do not address this motion. *See* Tenn. R. App. P. 13(b) (“Review generally will extend only to those issues presented for review.”)

The board's motion to dismiss raised a pure question of law, *i.e.*, whether the plaintiff's petition contains the required elements. This issue did not require an evidentiary hearing. While the court could have set the motion for oral argument, it certainly was not required to do so. Such a hearing was not necessary. A cursory review of the plaintiff's petition clearly shows the deficiencies upon which the defendants and the trial court relied. Neither party was permitted to present oral argument on the motion. The plaintiff's second issue is without merit.

IV.

The judgment of the trial court is affirmed. This case is remanded to the trial court for the collection of costs assessed below, pursuant to applicable law. Costs on appeal are taxed to the appellant, Steven Hughes.

CHARLES D. SUSANO, JR., JUDGE